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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/926,736	12/11/2001	Ran Stern	C-17-60-4 PCTUS	2069

23366 7590 07/28/2003

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EXAMINER

TRAN, LOUIS B

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 07/28/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/926,736

Applicant(s)

STERN, RAN

Examiner

Louis B Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15, 17-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15, 17-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 29 May 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation " sealant layer is provided at half its final thickness" in line 7 of the claim. There is insufficient antecedent basis for this limitation in the claim. There is no final thickness defined in the claims and it is unclear what would be considered a final thickness.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 5-7, 9-13, 15, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Yoshida (4,762,514).

With respect to claim 5, Yoshida anticipates a method of producing a container made out of flexible laminate web material, comprising using a directed energy source

22 to provide a puncture point on a surface of said web material at the intersection of at least two beam paths across said web material seen in Figure 11.

With respect to claim 6, Yoshida anticipates a method wherein said puncture point is formed by the intersection of at least three laser score paths as in Figure 1.

With respect to claim 7, Yoshida anticipates a method wherein said intersection of laser score paths is provided against a highlighted background area on said web material.

With respect to claim 9, Yoshida anticipates adjusting the energy and the speed of the laser beam to achieve the effect of a beam in the range of 2.5 to 3.5 joules as in column 5, line 31.

With respect to claim 10, Yoshida anticipates adjusting the laser beam energy by changing the distance between a surface and said directed energy source as in column 5, lines 32-42.

With respect to claim 11, Yoshida anticipates wherein said highlighted area is a dot as seen in Figure 1.

With respect to claim 12, Yoshida anticipates a container made out of flexible laminate web having a focal weakness comprising intersecting laser score paths, provided for insertion of drinking straw.

With respect to claim 13, Yoshida anticipates a container wherein said intersection of laser score paths is provided in a highlighted area on said web material.

With respect to claim 15, Yoshida anticipates a container comprising a dot on the outer side of the front side of the bag, in order to enable a child to know where is the exact place which should be pierced by the straw.

With respect to claim 18, Yoshida anticipates a container made from at least two panels of flexible laminate web material, at least one of said two panels of flexible laminate web material having a structural layer 20, and a barrier layer 6, said structural layer and said barrier layer having a hole passing there through as in Figure 10 A, and further having an extruded sealant layer 4 applied onto a barrier layer 3 and occluding said hole passing through said barrier layer and said structural layer as seen in Figure 3.

With respect to claim 19, Yoshida anticipates a sealant layer 2 applied onto said extruded sealant layer 4.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wild (5,868,658) in view of Heller Jr. et al. (3,459,625).

Wild discloses the invention substantially as claimed including the method of making a beverage container constructed from at least two panels of flexible laminate web material, at least a first panel thereof having a structural layer, a barrier layer and

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an outer sealant layer 1a, 1b, 1c, in which said sealant layer is provided at half its final thickness, said method comprising the steps of punching a hole through all the said layers of said first panel (as in claim 1), joining panels to thereby form a drinking pouch, the steps of conveying the bottom sheeting web in the conveying direction between the front and rear side sheeting webs, and welding the bottom sheeting web in part to the front and rear side sheeting webs as in column 3, lines 55-65 (as in claim 3 and 4) but does not show supplementing said sealant layer with molten sealant applied by extrusion coating, along the entire outer surface of said sealant layer, thereby occluding said hole, said molten sealant supplement functioning as the equivalent of a closure sheeting patch, cooling said first panel and joining said panels to thereby form a drinking pouch(as in claim 1).

However, Heller Jr. et al. teaches the use of supplementing said sealant layer with molten sealant applied by extrusion coating, along the entire outer surface of said sealant layer, thereby occluding said hole, said molten sealant supplement functioning as the equivalent of a closure sheeting patch, cooling said first panel and joining said panels to thereby form a drinking pouch as described in column 5, lines 10-30(as in claim 1), said extruded molten sealant is extruded molten polyethylene (as in claim 2), for the purpose of covering an aperture as described in column 6, lines 40-58 and to increase production speed as in column 1, lines 36-60.

Therefore, it would have been obvious to one having ordinary skill in the art to provide a step of utilizing extruded molten sealant instead of a dry sealant which is later heat sealed in order to increase production speed.

Moreover, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide an extruded laminate layer instead of a dry laminate layer since the examiner takes Official Notice of the equivalence of extruded layers and dry layers (item 2 in Wild) for their use in the packaging art and the selection of any of these known equivalents to provide a layer to cover an aperture would be within the level of ordinary skill in the art.

With respect to claim 2, Wild discloses the claimed invention except for the sealant layer being explicitly polyethylene. It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize polyethylene, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

7. Claims 8, 14, and ~~15~~ are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshida (4,762,514).

Yoshida teaches the use of using and adjusting energy of a beam but does not specifically state that a beam containing 3-4 times the energy used in normal scoring treatment is used.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a working range of 3-4 times energy typically used, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in

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the art. *In re Aller*, 105 USPQ 233. Moreover, Yoshida teaches that such adjustability is obvious in column 5, lines 33-42.

Therefore, with respect to claim 14, Yoshida does not specifically state that the width of the laser score path is 3-4 times wider than normal, thereby providing a larger focal weakness.

Again, optimization of the range of laser score width is within the grasp of one of ordinary skill in the art. *In re Aller*, 105 USPQ 233

With respect to claim 16, Yoshida teaches the inherent method steps of covering holes by extrusion lamination of two layers, an adherence layer 4 and an outer layer 2. The adherence layer 4 is spread uniformly on to the sheet, thereby occluding the entire surface of the front side web including said holes, a layer is placed onto the adherence layer during the production process using the adherence layer as an adhesive in order to stick the web together as described in column 3, lines 5-25.

8. Claims 20 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wild (5,868,658) in view of Yoshida (4,762,514).

Wild discloses the invention substantially as claimed including a method of making a beverage container comprising covering punched holes by forming a sealant layer 2 as seen in Figure 5 but does not show using extrusion lamination, said sealant layer comprised of two layers, a molten adherence layer and a solid layer, said adherence layer spread uniformly on to the sheet thereby occluding the entire surface of the front side web including said holes, said outer layer placed unto said adherence



layer during the production process, using said adherence layer as an adhesive in order to stick the web together.

However, Yoshida teaches the use of extrusion lamination, said sealant layer comprised of two layers, a molten adherence layer 4 and a solid layer 5, said adherence layer spread uniformly on to the sheet thereby occluding the entire surface of the front side web including said holes, said outer layer placed unto said adherence layer during the production process, using said adherence layer as an adhesive in order to stick the web together as seen in Figure 7 of Yoshida (as in claim 20), in which the punched holes are covered by said sealant layer, the width of said entire sealant layer comprised of said molten adherence layer and said solid outer layer (as in claim 17) for the purpose of reinforcement as in column 3, lines 15-25.

Therefore, it would have been obvious to one having ordinary skill in the art to provide Wild with a specific sealant layer configuration in order to establish further reinforcement.

### ***Conclusion***

9. Applicant's remarks have been fully considered but are deemed moot in view of the new grounds of rejection and applicant's remarks are deemed non-persuasive.

Applicant contends that the applicant's laser is movable and the prior art is not. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., movable laser and doubly scoring) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are

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not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant also contends that Yoshida does not show holes being "occluded". It may be useful to recall the known definition of occlude:

**oc·clude** (e-kljd') *verb*

**oc·clud·ed**, **oc·clud·ing**, **oc·cludes** *verb, transitive*

1. To cause to become closed; obstruct: *occlude an artery*.

2. To prevent the passage of: *occlude light*; *occlude the flow of blood*.<sup>1</sup>

Clearly, Yoshida teaches the sealant layer obstructing or preventing passage of something through the hole. Claims are given their broadest reasonable interpretation.

Applicant further contends that the dispensing pouches have a specific area of weakness designed for the ease of puncture. Again, the feature which applicant is relying upon is not in the claims (ie. a specific area of weakness designed for ease of puncture)

However, in response to applicant's argument that the area of Heller is not for ease of puncture, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

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<sup>1</sup> *The American Heritage® Dictionary of the English Language, Third Edition* copyright © 1992 by Houghton Mifflin Company. Electronic version licensed from INSO Corporation; further reproduction

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

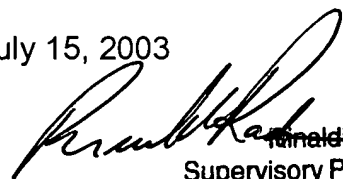
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis B Tran whose telephone number is 703-305-0611. The examiner can normally be reached on 8AM-6PM Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on 703-308-2187. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

1st July 15, 2003

  
Rinaldi I. Rada  
Supervisory Patent Examiner  
Group 3700